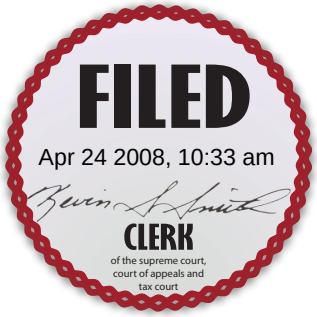

ATTORNEY FOR APPELLANT:

MATTHEW JON McGOVERN
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

PAUL R. WALLACE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 31A01-0709-CR-441
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HARRISON SUPERIOR COURT
The Honorable Roger D. Davis, Judge
Cause No. 31D01-0703-FB-240

April 24, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Paul R. Wallace appeals the ten-year aggregate sentence that was imposed following his convictions for Possession of Methamphetamine,[1] a class D felony, Possession of Two or More Precursors with the Intent to Manufacture,[2] a class D felony, and the finding that he was a Habitual Substance Offender.[3] Specifically, Wallace argues that the sentence must be set aside because the trial court allegedly failed to provide an adequate sentencing statement, that the trial court failed to identify his substance abuse as a mitigating factor, that the sentence was inappropriate in light of the nature of the offenses and his character, and that the trial court erred in identifying his criminal history as the basis for enhancing the sentence and in ordering the sentences to run consecutively. Finding no error, we affirm the judgment of the trial court.

FACTS

On March 23, 2007, Wallace was charged with possession of methamphetamine, a class B felony, possession of methamphetamine, a class D felony, possession of two or more precursors with intent to manufacture as a class C felony, possession of two or more precursors with intent to manufacture as a class D felony, and possession of paraphernalia as a class A misdemeanor. The State also charged Wallace with being a habitual substance offender.

Thereafter, Wallace pleaded guilty to possession of methamphetamine as a class D felony, possession of two or more precursors with the intent to manufacture as a class D

[1] Ind. Code § 35-48-4-6.1.

[2] I.C. § 35-48-4-14.5.

[3] Ind. Code § 35-50-2-10.

felony, and the habitual substance offender count. In exchange for Wallace's guilty plea, the State agreed to dismiss the remaining charges.

At the sentencing hearing that was conducted on August 30, 2007, the trial court accepted the plea agreement and entered judgments of conviction thereon. After pointing out that Wallace has accumulated nine arrests and twelve convictions over a twenty-year period, the trial judge commented as follows:

> Mr. Wallace, I'm gonna tell you what then, if that's it, here's the thing, a lot of people would look at your record and, and their first reaction would be, "You've been in that much trouble, you deserve the maximum sentence." That's what they, the first reaction would be for a lot of people. But I really don't think that would be right for your. . . . I certainly don't think you deserve the minimum sentence. All the trouble you've been in and uh, and all that. And I really uh, as I look over your record and thought about this. . . . I think that probation officer, I sometimes disagree with them . . . think they've got it too lenient, think they go too much . . . but in your case, I think they've got it just about right.

Tr. p. 52. The trial court then sentenced Wallace to a two-year suspended sentence for possession of methamphetamine as a class D felony and to two years for possession of two or more precursors with the intent to manufacture as a class D felony with one year suspended to probation, to run consecutively. The trial court then enhanced the sentence by six years for being a habitual substance offender. In sum, the trial court sentenced Wallace to an aggregate ten-year sentence with three years suspended to probation. He now appeals.

I. Sentencing Statement

Wallace first claims that the sentence must be set aside because the trial court's sentencing statement was deficient. Specifically, Wallace argues that the trial court,

despite discussing his criminal "record" and the prior "trouble" that he had been in, did not specifically indicate whether it considered his criminal history as an aggravating circumstance. Moreover, Wallace claims that the trial court only used his arrest record as the basis for enhancing the sentence. Appellant's Br. p. 5.

In resolving this issue, we initially observe that the trial court's sentencing determination will be reversed only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007). An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. Id. When a trial court imposes a sentence in a felony case, it must provide a reasonably detailed sentencing statement. Id. A trial court abuses its discretion only when (1) the trial court fails to provide any sentencing statement; (2) the sentencing statement is not supported by the record; (3) the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration by the defendant; or (4) the trial court's reasons are improper as a matter of law. Id. at 490-91.

In this case, the trial court considered Wallace's "trouble" and "record," and determined that neither the minimum nor the maximum sentences were appropriate. Id. at 52. As a result, the trial court enhanced Wallace's sentences six months above the advisory term[4] on each class D felony conviction. Although Wallace maintains that the

[4] Indiana Code section 35-50-2-7 provides that "A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years."

trial court was "unclear" as to whether it enhanced the sentence based on his "trouble" or criminal "record," it is undisputed that Wallace has accumulated thirteen convictions and nine arrests over a twenty-year period. Appellant's App. p. 48-50. In our view, it is apparent that the trial court used the word "trouble" to refer to Wallace's refusal to comply with the law. Also, contrary to Wallace's argument, there is nothing to suggest that the trial court used Wallace's arrests, alone, to enhance the sentence. Therefore, Wallace's claim that the trial court's sentencing statement was inadequate fails.

II. Mitigating Factors

Wallace next claims that his sentence must be set aside because the trial court should have identified his substance abuse as a mitigating factor. We note that the trial court must consider all evidence of mitigating circumstances offered by the defendant and the finding of those factors is within the trial court's discretion. Groves v. State, 787 N.E.2d 401, 409 (Ind. Ct. App. 2003). A trial court does not err in refusing to identify a circumstance as mitigating "when a mitigation claim is highly disputable in nature, weight, or significance." Id. Although a failure to find mitigating circumstances clearly supported by the record "may imply that the sentencing court improperly overlooked them, the court is obligated neither to credit mitigating circumstances in the same way as would the defendant, nor to explain why he or she has chosen not to find mitigating circumstances." Id.

In this case, Wallace has not explained how his substance abuse addiction warrants a mitigation of his sentence. Indeed, Wallace admits that he is an alcoholic and drug addict. Appellant's Br. p. 10; Tr. p. 36-37. Moreover, although the evidence shows

that Wallace has completed some treatment programs, he continues to resort to alcohol and drug usage and has done nothing to change his lifestyle. Appellant's App. p. 53. Finally, we note that this court has determined that alcohol and substance abuse have been previously identified as a proper aggravating factor. See Bryant v. State, 802 N.E.2d 486, 501-02 (Ind. Ct. App. 2004) (holding that substance addiction is more properly characterized as an aggravating factor, especially when the defendant is aware of the problem and has taken no steps to correct it). Under these circumstances, the trial court did not err in failing to identify Wallace's drug and alcohol abuse as a mitigating factor.

III. Appropriate Sentence

Wallace next argues that that the ten-year sentence with three years suspended to probation is inappropriate in light of the nature of the offenses and his character. More specifically, Wallace maintains that the sentence is not warranted because the trial court acknowledged "[Wallace's] many very positive qualities and his struggle with drug addiction." Appellant's Br. p. 6.

Pursuant to Indiana Appellate Rule 7(B), our court has the constitutional authority to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is "inappropriate in light of the nature of the offense and the character of the offender." We defer to the trial court during appropriateness review, Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007), and we refrain from merely substituting our judgment for that of the trial court. The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

With regard to the nature of the offenses, the evidence showed that Wallace was found with five precursors, which indicate that he planned to manufacture methamphetamine. Tr. p. 17, 22-23. Therefore, based on Wallace's continued and increased involvement with methamphetamine use and production, his nature of the offense argument does not aid his inappropriateness claim.

Turning to Wallace's character, the record reflects that even though he completed various treatment programs, he attempted to circumvent a urine drug test while on probation. Id. at 48. Wallace was a resident in an alcohol treatment program for eleven months, but he was discharged after he tested positive for methamphetamine. Appellant's App. p. 53. Additionally, the record shows that at some point, Wallace was entrolled in an outpatient program and his prognosis was "poor" because it was reported that Wallace "verbalized his resistance to improve his circumstances, [and] . . . has no intention of stopping his drug/alcohol use." Id. Moreover, Wallace blamed his drug and alcohol relapses on his divorce and the fact that his house had been burglarized. Tr. p. 36.

As noted above, Wallace also has an extensive criminal record spanning the course of twenty years. His felony convictions include residential entry, two operating a vehicle after life forfeitures, and two driving while intoxicated convictions as class D felonies. His misdemeanors include invasion of privacy, six driving while intoxicated convictions, and two public intoxications. Appellant's App. p. 48-50.

In essence, Wallace has failed to show any signs of conforming his conduct to the law, and he continues to reoffend. Thus, we can only conclude that Wallace requires the

correctional treatment that incarceration will provide. As a result, we find that Wallace's sentence is not inappropriate.

IV. Enhanced and Consecutive Sentences

Finally, Wallace argues that the trial court erred in ordering enhanced and consecutive sentences. More specifically, Wallace claims that the trial court failed to articulate how his criminal history "was egregious enough that it justified both consecutive and aggravated sentences." Appellant's Br. p. 6.

In resolving this issue, we note that the trial court's sentencing discretion includes the determination whether to increase the sentence, to impose consecutive sentences on multiple convictions, or both. Edmonds v. State, 840 N.E.2d 456, 461 (Ind. Ct. App. 2006). The imposition of consecutive sentences is a separate decision from sentence enhancement, although both may be dependent upon the same aggravating circumstances. Mathews v. State, 849 N.E.2d 578, 589 (Ind. 2006). As with sentence enhancement, even a single aggravating circumstance may support the imposition of consecutive sentences. Id. In determining whether to increase presumptive penalties, impose consecutive sentences, or both, the trial court determines which aggravating and mitigating circumstances to consider, and is solely responsible for determining the weight to accord each of these factors. Moyer v. State, 796 N.E.2d 309, 312 (Ind. Ct. App. 2003). A single aggravating factor can be used to both enhance a sentence and to impose consecutive sentences when the single aggravator is particularly egregious.

As discussed above, Wallace's extensive criminal history consists of nine arrests and thirteen convictions over a twenty-year period. In our view, Wallace's criminal

history is particularly egregious, and we cannot say that the trial court abused its discretion in imposing both enhanced and consecutive sentences based on that aggravator.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.